

## **Freedom of Information Act 2000 (Section 50)**

### **Environmental Information Regulations 2004**

#### **Decision Notice**

**Date 15 November 2006**

**Public Authority:** Salisbury District Council  
**Address:** The Council House  
Bourne Hill  
Salisbury  
SP1 3UZ

#### **Summary**

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The complainant requested copies of letters supporting the imposition of a tree preservation order which was imposed upon his land by Salisbury District Council. The Council provided the complainant with unedited copies of the letters where the writers had consented to disclosure of their identity. Where the writers had not consented, their personal information was redacted before copies of the letters were provided. The Council advised the complainant that the redacted information had been withheld under Section 40(2) of the Act. Having investigated, the Commissioner is satisfied that the information was appropriately withheld although the Environmental Information Regulations should have been applied and the information withheld under Regulation 13.

#### **The Commissioner's Role**

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1. The Environmental Information Regulations ("the Regulations") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.
2. The information requested by the complainant is environmental information as defined in regulation 2 of the Regulations.
3. The Commissioner has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part 2 of the Regulations. His decision is set out below.

## The Request

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4. On 5 April 2005 the complainant requested the public authority, Salisbury District Council ("SDC") to provide him with the many letters regarding the imposition of a tree preservation order ("TPO") on his property issued on 4 April 2005 including the names of signatories to those letters. He also requested the names of councillors voting for and against the TPO which he later amended to the name of the officer responsible for the TPO on 7 April 2005.
5. On 29 April 2005, SDC provided the complainant with the name of the TPO officer but refused the request for names of the signatories and copies of letters on the basis of the exemptions in the Act at:
  - Section 40(2) - personal information
  - Section 22 - information intended for future publication.
6. On 16 May 2005, the complainant contacted SDC to advise that he was dissatisfied with its refusal notice. On 9 June 2005, SDC responded to the complainant advising that its decision of 29 April 2005 was upheld.
7. On 10 June 2005, the complainant requested a second stage complaint escalation in respect of both the TPO and the request for information. The report on the second stage complaint was communicated to the complainant in a letter dated 21 July 2005. In respect of the Act, SDC conceded that it could have responded more clearly to the request but that the information had been correctly withheld and also that timescales had been complied with.
8. The Commissioner has gleaned the above facts from a synopsis prepared by SDC and agreed by the complainant. The Commissioner has not considered it necessary to have sight of the actual correspondence which passed between the parties.

## The Investigation

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### Scope of the case

9. On 30 July 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to review the withholding of the information as he did not accept SDC's decision.
10. In a letter dated 12 October 2005, the complainant updated the Commissioner to advise that on 31 August 2005 he had visited SDC's offices to view the TPO file. He had been able to read five letters from individuals in support of the TPO which had been redacted and which he took photographs of as he said he was advised that it was forbidden to photocopy anything from the file.

11. The Commissioner began his investigation on 6 March 2006 when he contacted the complainant to clarify his complaint due to the passage of time and the inspection of the information. On 8 March 2006 the complainant advised the Commissioner that he still required a ruling on his complaint because he required sight “of all the unedited letters supporting the imposition of the TPO that were submitted to Salisbury District Council”.
12. The scope of the complaint is therefore to investigate whether the redactions to the letters supporting the imposition of the TPO were appropriate.

### **Chronology of the case**

13. As stated above, the complainant visited SDC's offices on 31 August 2005 to inspect the requested information. Following a telephone conversation on 12 May 2006, SDC agreed with the Commissioner that whilst the complainant had inspected the requested information he had not been provided with a copy of it. As a result of this, a copy was disclosed to the complainant by SDC on 25 May 2006.
14. On 1 June 2006 the complainant contacted the Commissioner to advise that he was not satisfied with the disclosure provided as the letters had been edited.
15. In a letter dated 8 August 2006, SDC advised the Commissioner that on reflection, it felt the requested information is environmental information. On that basis, subject to the public interest test, SDC could have withheld the information under the exceptions at:
  - Regulation 12(5)(f) – disclosure would adversely affect those who provided the information.
  - Regulation 13(2)(a)(i) – personal information
  - Regulation 12(4)(d) – information in the course of completion.

### **Analysis**

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16. The Commissioner has considered whether this matter should have been dealt with under the Regulations. As the subject matter is the preservation of trees, it affects the environment or the states of the elements of the environment in the form of the landscape and consequently, the Commissioner considers it is environmental information.
17. The Commissioner has considered the public authority's response to the complainant's request for information. As the request should have been dealt with under the Regulations, the Commissioner finds that sections 22 and 40 of the Act were incorrectly applied. He does however note that the provisions in Section 40 of the Act are mirrored by Regulation 13 of the Regulations. However, there is no Regulation which mirrors precisely the provisions of section 22. Regulation 12(4)(d) relates to incomplete information, as opposed to information which exists at the time the request is received and is intended for future publication.

The provisions of Regulations 12(4)(d) and 13 are given in full in the Legal Annex as are sections 22 and 40 of the Act for the sake of completeness.

### **Exceptions – Regulation 13**

18. SDC contends that the redacted information is exempt under this provision as the information comprises personal data, the disclosure of which would contravene the first data protection principle.
19. Personal data relating to a third party is exempt from disclosure under the Regulations if either of the conditions referred to at 13(a) and (b) are satisfied. Regulation 13(a) is divided into two parts (i) and (ii).
20. The condition in Regulation 13(2)(a)(i) is satisfied where disclosure of the information requested would result in breaches of any of the 'data protection principles' set out in Schedule 1 Part I of the Data Protection Act 1998 (the "DPA").
21. The first data protection principle requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
22. When considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how the information they provided would be used and to whom it may be disclosed.
23. The Commissioner accepts that where a person informs a public authority about their concerns regarding the lopping or removal of trees, they would not normally expect the contents of their correspondence to be disclosed to the individual who they believe is likely to commit the act. Having reviewed the redacted information, the Commissioner is satisfied that it identifies the individuals and that the information was provided with an expectation of confidence.
24. Consequently, to release personal data about the individuals would contravene the first data protection principle on the basis that it would be both unfair and unlawful as no condition set out in Schedule 2 of the DPA is satisfied.
25. The Commissioner considers therefore that Regulation 13(1) & (2)(a)(i) applies to the withheld information. In these circumstances it is not necessary to consider the public interest test..

### **The Decision**

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- 26. The Commissioner's decision is that the public authority misapplied the Act to the request for information which should have been considered under the Regulations.
- 27. The Commissioner does however find that the information which was withheld under section 40 would and should be withheld under Regulation 13 of the Regulations. Consequently, the redactions made to the information were correct.
- 28. The Commissioner further finds that it was inappropriate for SDC to have relied on the exemption in section 22 of the Act. In effect this delayed the communication of information to which the complainant was entitled, although he did receive it on 25 May 2006.
- 29. Since Regulation 13 applies, the Commissioner has not conducted a detailed analysis of the other exceptions cited by SDC as referred to at paragraph 15 above.

### Steps Required

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- 30. The Commissioner requires no steps to be taken.

### Right of Appeal

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- 31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 15 day of November 2006**

**Signed .....**

Reference: FER0085943



Information Commissioner's Office

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Environmental Information Regulations 2004

**Regulation 12(4)(d)** provides:

#### **Exceptions to the duty to disclose environmental information**

**12.** - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
  - (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

**Regulation 13** provides:

"13. - (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is -

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene -

- (i) any of the data protection principles; or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998[7] (which relate to manual data held by public authorities) were disregarded.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the

public authority, whether or not it holds such information, to the extent that -  
(a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or  
(b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of that Act.”

## **Freedom of Information Act 2000**

**Section 40** provides -

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.  
(2) Any information to which a request for information relates is also exempt information if-  
(a) it constitutes personal data which do not fall within subsection (1), and  
(b) either the first or second condition below is satisfied.  
(3) The first condition is-  
(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-  
(i) any of the data protection principles, or  
(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and  
(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.  
(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

**Section 22** provides-

“(1) Information is exempt information if-  
(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),  
(b) the information was already held with a view to such publication at the time when the request for information was made, and  
(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).  
(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).”



